

ORDER NO. 2160

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Transferring Inbound Surface Parcel
Post (At UPU Rates)

Docket No. MC2014-28

ORDER APPROVING PRODUCT LIST TRANSFER

(Issued August 19, 2014)

I. INTRODUCTION

The Postal Service has filed a request seeking modification of the market dominant and competitive product lists pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*¹ For the reasons given below, the Commission approves the Request.

II. BACKGROUND

The Postal Service filed the instant Request, along with supporting documentation. The Request proposes to (1) transfer Inbound Surface Parcel Post (at Universal Postal Union (UPU) rates) from the market dominant product list to the

¹ Request of the United States Postal Service to Transfer Inbound Surface Parcel Post (at UPU rates) to the Competitive Product List, June 25, 2014 (Request).

competitive product list; (2) merge the transferred product with Inbound Air Parcel Post (at UPU rates); and (3) identify the merged product as Inbound Parcel Post (at UPU rates). *Id.* at 1. If approved, there would be a new product on the competitive product list called Inbound Parcel Post (at UPU rates) that has separate price categories for Inbound Air Parcel Post (at UPU rates) and Inbound Surface Parcel Post (at UPU rates). These changes, along with related conforming changes, are identified in proposed revisions to the Mail Classification Schedule (MCS). Request, Attachment C.

On June 27, 2014, the Commission issued an order noticing the Request, appointing a Public Representative, and providing interested persons with an opportunity to submit initial and reply comments.² On July 15, 2014, the Commission issued Chairman's Information Request No. 1, to which the Postal Service replied on July 22, 2014.³ The Public Representative filed comments on July 28, 2014.⁴ No other comments were received.

III. POSTAL SERVICE POSITION

The Postal Service asserts that although Inbound Surface Parcel Post (at UPU rates) is currently classified as part of the market dominant product list, it fulfills all of the criteria for competitive products under section 3642. Request at 2. It therefore states that the transfer of Inbound Surface Parcel Post (at UPU rates) to the competitive product list would be consistent with the current classification schedule. *Id.* at 1-2. The Postal Service's rationale is described in greater detail below.

² Order No. 2105, Notice and Order Concerning Transfer of Inbound Surface Parcel Post (at UPU rates) to the Competitive Product List, June 27, 2014. See *also* 79 FR 38077 (July 3, 2014).

³ Chairman's Information Request No. 1, July 15, 2014 (CHIR No. 1). Response of the United States Postal Service to Chairman's Information Request No. 1, July 22, 2014 (Response to CHIR No. 1).

⁴ Public Representative Comments on Postal Service Request to Transfer Inbound Surface Parcel Post (at UPU rates) to the Competitive Product List, July 28, 2014 (PR Comments).

IV. PUBLIC REPRESENTATIVE'S POSITION

The Public Representative concludes that the Postal Service's Request satisfies the criteria set forth in 39 U.S.C. §§ 3642 and 3633 and complies with 39 C.F.R. § 3020.30 *et seq.* PR Comments at 3-5. In her comments, the Public Representative notes that the transfer of Inbound Surface Parcel Post (at UPU rates) to the competitive product list completes the Postal Service's initiative to transition parcel services from the market dominant to the competitive product list. *Id.* at 4.

V. COMMISSION ANALYSIS

The Request must meet the requirements of 39 U.S.C. §§ 3642 and 3633 before the Commission can approve the proposed transfer. 39 U.S.C. § 3642 contains requirements for transferring a product from the market dominant to the competitive product list. 39 U.S.C. § 3633 lists provisions that must be complied with once a product is transferred to the competitive product list. The requirements of sections 3642 and 3633 are discussed below and applied to the Request.

A. Section 3642

39 U.S.C. § 3642(b)(1) provides that all Commission determinations on section 3642 requests must be in accordance with the statutory definitions for market dominant products and competitive products. Subsection (b)(2) provides that when a proposal involves a transfer from the market dominant product list to the competitive product list, a product is ineligible for transfer if it is covered by the postal monopoly. 39 U.S.C. § 3642(b)(2). Subsection (b)(3) requires the Commission to give due regard to three considerations: (1) the availability and nature of private sector enterprises engaged in delivering the product; (2) the views of those using the product; and (3) the likely impact on small business concerns within the meaning of section 3641(h). 39 U.S.C. § 3642(b)(3).

1. Consistency with Statutory Product Classification Definitions

The Postal Accountability and Enhancement Act established two statutory product categories. The market dominant category consists of those products over which the Postal Service exercises sufficient market power such that it can effectively set the price substantially above costs, raise prices significantly, decrease quality, or decrease output, without risking significant loss of business to other firms offering similar products. 39 U.S.C. § 3642(b)(1). The competitive category consists of all other products. *Id.*

The Postal Service asserts that approval of the modifications it has requested would be consistent with past practices regarding the MCS. In that regard, it notes that the Commission has previously classified a similar product, Air Parcel Post (at UPU rates), as competitive. Request, Attachment B at 3-4. Similarly, the Commission has classified the comparable domestic Parcel Post product as competitive. *Id.* at 4. Moreover, Inbound Surface Parcel Post (at non-UPU rates) has been included in bilateral agreements as part of the Inbound Competitive Multi-Service Agreements with the Foreign Postal Operators product. *Id.* Also, the UPU sets the prices for Inbound Surface Parcel Post, and therefore the Postal Service's market dominance is not related to the pricing of the product. *Id.* at 2. Finally, the Postal Service suggests that the transfer of Inbound Surface Parcel Post (at UPU rates) and the creation of a single classification for Inbound Parcel Post (at UPU rates), that includes both air and surface parcels under one heading, will foster consistent treatment of parcel products under the MCS. *Id.* at 4.

No commenter contends that the merged product, Inbound Parcel Post (at UPU rates), is improperly categorized as competitive.

The Commission finds that the transfer of Inbound Parcel Post (at UPU rates) is consistent with the statutory product classification definitions under 39 U.S.C. § 3642 b(1), provided that such transfer is consistent with other applicable requirements.

2. Status of Product Relative to Postal Monopoly

A product may not be transferred from the market dominant product list if it is subject to the Private Express Statutes. 39 U.S.C. § 3642(b)(2). The Postal Service asserts that Inbound Surface Parcel Post (at UPU rates) falls outside the scope of the letter monopoly because the rates payable to the Postal Service are higher than six times the current price of a one-ounce, single-piece First-Class letter and that, as such, the product falls within an exception to the Private Express Statutes at 39 U.S.C. § 601(b)(1). Request, Attachment B at 2.

The Commission finds that Inbound Surface Parcel Post (at UPU rates) falls outside the scope of the Private Express Statutes. It is therefore eligible for transfer to the competitive product list, provided such transfer is consistent with other applicable requirements.

3. Additional Statutory Considerations

The Commission must also consider the availability and nature of private sector enterprises engaged in the delivery of the product, the views of those using the product, and the likely impact on small business concerns. 39 U.S.C. § 3642(b)(3). Based upon the record before it, the Commission concludes that the Postal Service adequately addressed the impact on private sector competitors, customers, and small business concerns.

a. Availability and Nature of Private Sector Enterprises

In its Request, the Postal Service asserted that international shipping arrangements are offered by private consolidators, freight forwarders, and integrators “whereby they provide inbound parcel delivery services under similar conditions.” Request, Attachment B at 3.

In CHIR No. 1, the Commission asked the Postal Service to provide specific examples of private consolidators, freight forwarders, and integrators that offer products

under similar conditions. The Postal Service replied with further elaboration on the availability of inbound surface parcel delivery services by private sector providers that it asserts are comparable. It further notes that “any surface network that provides domestic carriage and delivery for inbound parcels would be considered a comparable service, regardless of how the parcels travel to the United States,” and provides examples of private sector entities that provide such comparable services. *Id.* at 2, question 2. The Postal Service also states that it offers comparable services that the Commission has previously classified as competitive. *Id.* at 3.

The Commission concludes that the availability and nature of private sector enterprises engaged in the delivery of similar products has been adequately addressed.

b. Product Users’ Views

The Postal Service states that it does not anticipate any major customer concerns. If transferred, neither the product, nor the inward land rates, will change. The classification of the product as market dominant or competitive will not affect the availability or terms and conditions of service.

While not dispositive, the absence of opposition from users suggests that they find the proposal unobjectionable or have alternatives available to satisfy their needs. The Commission finds that the views of those using the product have been adequately considered.

c. Impact on Small Business Concerns

The Postal Service states it does not anticipate an impact on small business concerns because the transfer of the product will change neither the product, nor the inward land rates.

No small business concern filed comments in this docket. This suggests both a lack of opposition to the transfer as well as acknowledgement of several private carrier alternatives. The available information supports the Postal Service’s contention that the proposed transfer is unlikely to have a material impact on small business concerns.

The likely impact of the proposed transfer on small business concerns has been adequately considered.

For the reasons discussed above, the Commission finds that the Request satisfies the applicable section 3642 criteria.

B. Section 3633(a)

The Postal Service must explain why the Request will not violate any of the standards of 39 U.S.C. § 3633(a). See 39 C.F.R. § 3020.32(c). The referenced standards require the Postal Service to demonstrate that the transfer will not cause market dominant products to subsidize competitive products; that the product will cover costs attributable; and that the product will contribute to institutional costs. See 39 U.S.C. § 3633(a)(1) through (3).

The Postal Service states that in fiscal year 2013, Inbound Surface Parcel Post (at UPU rates) had a 153.6 percent cost coverage. Request, Attachment B at 2. It asserts further that the combined cost coverage for Inbound Surface Parcel Post (at UPU rates) and Inbound Air Parcel Post (at UPU rates) from fiscal year 2013 demonstrate that the transfer of Inbound Surface Parcel Post (at UPU rates) to the competitive product list and its merger with Air Parcel Post (at UPU rates) will not adversely affect the Postal Service's ability to cover its total institutional costs. Accordingly, it concludes that there will be no subsidization of this competitive product by market dominant products.

The Commission's review of the financial workpapers indicates that Inbound Surface Parcel Post (at UPU rates) covers its attributable costs and makes a contribution to the Postal Service's institutional costs. This review also indicates that the merger of Inbound Surface Parcel Post (at UPU rates) with Air Parcel Post (at UPU rates) should not adversely affect the Inbound Parcel Post product's ability to contribute to institutional costs. Furthermore, the merger of these two products on the competitive product list should not result in the subsidization of this competitive product by market dominant products. Therefore, the proposed transfer satisfies section 3633(a).

VI. MCS Language

In its Request, the Postal Service proposed related revisions to the MCS.⁵ In CHIR No. 1, the Commission proposed some revisions to the Postal Service's draft language. In its Response to CHIR No. 1, the Postal Service accepted the Commission's revisions. Response to CHIR No. 1 at 1. The complete revised MCS language is provided below the signature of this Order.

VII. CONCLUSION

The Commission approves the product list modifications identified in the Request as modified. The proposed MCS revisions are accepted for purposes of the draft MCS, subject to revision, as appropriate, for consistency with the MCS as adopted.

VIII. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the product list modifications identified in Request of the United States Postal Service to Transfer Inbound Surface Parcel Post (at UPU rates) to the Competitive Product List, filed June 25, 2014. Those changes consist of: (1) the transfer of Inbound Surface Parcel Post (at Universal Postal Union (UPU) rates) from the market dominant product list to the competitive product list; (2) the merger of the transferred product with Inbound Air Parcel Post (at UPU rates); and (3) the renaming of the merged product as Inbound Parcel Post (at UPU rates). These changes are effective as set forth in the body of this Order.

⁵ The proposed MCS revisions appear in Request, Attachment C.

2. The Commission accepts the revisions to the draft Mail Classification Schedule proposed by the Postal Service in its Request and subsequently amended, in part, in the Response to Chairman's Information Request No. 1. The revised language appears below the signature of this Order, subject to the need for revision for consistency with the Mail Classification Schedule as adopted. These changes are effective as set forth in the body of this Order.
3. The Commission directs the Secretary to arrange for publication in the *Federal Register* in the next periodic update.

By the Commission.

Shoshana M. Grove
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products

1400 Package Services

1400.2 Products Included in Class

- ~~Inbound Surface Parcel Post (at UPU rates) (1410)~~

1410 ~~Inbound Surface Parcel Post (at UPU rates)~~**1410.1 ~~Description~~**

- ~~a. Inbound Surface Parcel Post consists of inbound International pieces (originating outside of the United States and destined for delivery inside of the United States) that are subject to the provisions of the Universal Postal Convention and the Parcel Post Regulations. Transit mail, which consists of surface parcel post mail transiting from a foreign country to another foreign country through the United States, is included in this grouping.~~
- ~~b. The insertion of correspondence, with the exception of archived materials, exchanged between persons other than sender and the addressee or persons living with them, is prohibited~~
- ~~c. Inbound Surface Parcel Post includes reciprocal indemnity based on the weight of the parcel.~~
- ~~d. Postage and other charges paid by the sender are determined by the country of origin.~~

1410.2 ~~Size and Weight Limitations~~

	Length	Height	Thickness	Weight
Minimum	5.5 inches	none	3.5 inch	none
Maximum	42 inches			70 pounds
	79 inches in combined length and girth			

~~1410.3 Minimum Volume Requirements~~

	Minimum Volume Requirements
Inbound Surface Parcel Post	none

~~1410.4 Price Categories~~

~~The following price categories are available for the product specified in this section:~~

- ~~• UPU Inward Land Rates~~

~~1410.5 Optional Features~~

~~The following additional postal services may be available in conjunction with the product specified in this section:~~

- ~~• International Ancillary Services (1510)~~
 - ~~○ Inbound International Return Receipt (1510.3)~~
 - ~~○ Inbound International Insurance (1510.5)~~
 - ~~○ Customs Clearance and Delivery Fee: dutiable items only (1510.6)~~

~~1410.6 Prices~~

~~Foreign administrations pay the Postal Service for the delivery of inbound mail at prices set by the Postal Operations Council, known as inward land rates. Payment by the foreign administration is made in accordance with Universal Postal Convention Part III, Chapter 2 and associated UPU Parcel Post Regulations. This information is available in the Parcel Post Manual at www.upu.int.~~

1500**Special Services**

1500.2**Products Included in Class**

- International Ancillary Services (1510)

~~○ International Insurance (1510.5)~~

1510 International Ancillary Services

1510.3 International Return Receipt

1510.3.1 Description

Inbound International Return Receipt

- b. International Return Receipt service is available for registered letter post items and insured parcels.

~~1510.5 International Insurance~~

~~1510.5.1 Description~~

~~Inbound International Insurance is available for inbound surface parcels from countries which offer the service on a reciprocal basis. Indemnity limits vary by country as specified in the International Mail Manual. The maximum insurance limit available into the United States is \$5,000.00.~~

~~1510.5.2 Prices~~

~~Payment is made in accordance with Part III of the Universal Postal Union Convention. This information is available in the Parcel Post Manual at www.upu.int.~~

Part B—Competitive Products

2300 International Products

2310 Inbound Air Parcel Post (at UPU rates)

2310.1 Description

- ~~a. Inbound Air Parcel Post (at UPU rates) is designed for the carriage of postal parcels that are tendered by foreign postal operators and eligible for transportation by air.~~
- ~~b. The insertion of correspondence, with the exception of archived materials, exchanged between persons other than sender and the addressee or persons living with them, is prohibited.~~
- ~~ae. Inbound Air Parcel Post (at UPU rates) service, with the exception of transit mail, is not sealed against inspection.~~
- ~~b. The insertion of correspondence, with the exception of archived materials, exchanged between persons other than sender and the addressee or persons living with them, is prohibited.~~
- ~~cd. Single-Piece Inbound Air Parcel Post (at UPU rates) service is subject to the provisions of the Universal Postal Convention and the Universal Postal Union Parcel Post Regulations.~~
- ~~e. Reciprocal indemnity based on the weight of the parcel, is included. Limits of indemnity based on weight correspond to the outbound limitations for Priority Mail International service specified in the International Mail Manual.~~
- ~~df. Inbound Air Parcel Post (at UPU rates) includes transit revenue for air-parcels transiting from a foreign country to another foreign country through the United States.~~
- ~~e. Postage and other charges paid by the sender are determined by the country of origin.~~

Inbound Air Parcel Post (at UPU rates)

- a. Inbound Air Parcel Post (at UPU rates) is designed for the carriage of postal parcels that are tendered by foreign postal operators and eligible for transportation by air.
- b. Reciprocal indemnity based on the weight of the parcel is included. Limits of indemnity based on weight correspond to the outbound limitations for Priority Mail International service specified in the International Mail Manual.

Inbound Surface Parcel Post (at UPU rates)

- a. Inbound Surface Parcel Post (at UPU rates) is designed for the carriage of postal parcels that are tendered by foreign postal operators and eligible for transport by a non-priority (surface) network.
- b. Indemnity for Inbound Surface Parcel Post (at UPU rates) based on the weight of the parcel is included.

2310.3 Minimum Volume Requirements

	Minimum Volume Requirements
Inbound-Air Parcel Post (at UPU rates)	none

2310.6 Prices

Foreign postal operators pay the Postal Service inward land rates for the delivery of inbound mail. The Universal Postal Union Postal Operations Council sets the amount paid for incoming air parcel flows tendered by postal operators with which there is no contractual relationship governing the applicable price. Payment by the foreign postal operators is made in accordance with Universal Postal Convention Part III, Chapter 2 and associated UPU Parcel Post Regulations. This information is available in the Parcel Post Manual at www.upu.int.

2600 Special Services

2615 International Ancillary Services

2615.3 International Return Receipt

2615.3.1 Description

Inbound International Return Receipt

- b. Inbound International ~~R~~eturn ~~R~~eceipt service is available for insured air and surface parcels.

2615.5 International Insurance

2615.5.1 Description

Outbound International Insurance

- a. Optional ~~O~~utbound International Insurance may be purchased to protect against loss, damage, or missing contents for Priority Mail International parcels and Priority Mail International Large and Medium Flat Rate Boxes. When additional insurance is purchased for uninsured Priority Mail International parcels, it replaces the indemnity coverage.

Inbound International Insurance

- a. Inbound International Insurance is available for inbound air parcels and inbound surface parcels from countries which offer the service on a reciprocal basis. Indemnity limits vary by country as specified in the International Mail Manual. The maximum insurance limit available in the United States is \$5,000.00.
